

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1278 Session of 2023

INTRODUCED BY PIELLI, BRIGGS, MADDEN, DELLOSO, SANCHEZ, SCOTT AND GREEN, MAY 30, 2023

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 28, 2023

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in wiretapping and electronic
3 surveillance, further providing for definitions and FOR <--
4 EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND DISCLOSURE OF
5 COMMUNICATIONS, PROVIDING FOR DEPARTMENT OF CORRECTIONS
6 RETENTION POLICY AND FURTHER PROVIDING for expiration of
7 chapter.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The definition of "oral communication" in section
11 5702 of Title 18 of the Pennsylvania Consolidated Statutes is
12 amended by adding paragraphs AND THE SECTION IS AMENDED BY <--
13 ADDING A DEFINITION to read:

14 § 5702. Definitions.

15 As used in this chapter, the following words and phrases
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "AGENT." AS DEFINED IN 61 PA.C.S. § 6101 (RELATING TO <--
19 DEFINITIONS).

20 * * *

1 "Oral communication." Any oral communication uttered by a
2 person possessing an expectation that such communication is not
3 subject to interception under circumstances justifying such
4 expectation. The term does not include the following:

5 * * *

6 (3) A communication made BY A PERSON SUBJECT TO STATE <--
7 PAROLE in the PHYSICAL presence of an agent, as defined in 61 <--
8 Pa.C.S. § 6101 (relating to definitions), who meets all of
9 the following:

10 (i) Is CLEARLY IDENTIFIABLE AND on official duty. <--

11 (ii) Is using an electronic, mechanical or other
12 device that has been approved under section 5706(b)(4) to
13 intercept a wire, electronic or oral communication in the
14 course of official duties.

15 (iii) Has received training on the device.

16 (IV) HAS PROVIDED PRIOR WRITTEN NOTICE TO A PERSON <--
17 UNDER THE LAWFUL SUPERVISION OF STATE PAROLE THAT THE
18 AGENCY MAY INTERCEPT COMMUNICATIONS WITH THE PERSON.

19 (V) PROVIDES VERBAL NOTICE AT THE TIME OF THE
20 RECORDING THAT COMMUNICATES WITH THE AGENT THAT THE
21 COMMUNICATION MAY BE RECORDED, UNLESS EXIGENT
22 CIRCUMSTANCES EXIST THAT WOULD PREVENT VERBAL
23 NOTIFICATION.

24 (4) A communication made in the presence of an
25 individual employed in the Department of Corrections, Bureau
26 of Investigations and Intelligence holding a police officer
27 commission under the act of May 21, 1943 (P.L.469, No.210),
28 entitled "An act providing for commissioning as police
29 officers certain employes of institutions maintained in whole
30 or in part by the Commonwealth; conferring upon them the

1 powers of constables in certain cases; and imposing duties on
2 wardens and keepers of jails, police stations and lock-ups,"
3 who meets all of the following:

4 (i) Is CLEARLY IDENTIFIABLE AND on official duty. <--

5 (ii) Is using an electronic, mechanical or other
6 device that has been approved under section 5706(b)(4) to
7 intercept a wire, electronic or oral communication in the
8 course of official duties.

9 (iii) Has received training on the device.

10 * * *

11 (IV) IS NOT INTERCEPTING A COMMUNICATION FROM INSIDE <--
12 THE RESIDENCE OF AN EMPLOYEE OF THE DEPARTMENT OF
13 CORRECTIONS WITHOUT THE CONSENT OF THE EMPLOYEE OR PRIOR
14 COURT APPROVAL.

15 * * *

16 SECTION 2. SECTION 5704 OF TITLE 18 IS AMENDED BY ADDING A
17 PARAGRAPH TO READ:

18 § 5704. EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND
19 DISCLOSURE OF COMMUNICATIONS.

20 IT SHALL NOT BE UNLAWFUL AND NO PRIOR COURT APPROVAL SHALL BE
21 REQUIRED UNDER THIS CHAPTER FOR:

22 * * *

23 (19) THE FOLLOWING:

24 (I) AN AGENT TO INTERCEPT AN ORAL COMMUNICATION
25 WHERE:

26 (A) THE COMMUNICATION IS MADE BY A PERSON
27 SUBJECT TO STATE PAROLE OR A THIRD PARTY IN THE
28 VICINITY OF AN AGENT INTERACTING WITH A PERSON
29 SUBJECT TO STATE PAROLE; OR

30 (B) THE COMMUNICATION IS MADE BY ANOTHER AGENT,

1 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER PRESENT
2 DURING THE AGENT'S INTERACTION WITH A PERSON SUBJECT
3 TO STATE PAROLE.

4 (II) NO INTERCEPTION MADE UNDER THIS PARAGRAPH SHALL
5 BE DISCLOSED TO AN INVESTIGATIVE OR LAW ENFORCEMENT
6 OFFICER UNLESS DISCLOSED PURSUANT TO A LAWFUL WARRANT.

7 SECTION 3. SUBCHAPTER C OF CHAPTER 57 OF TITLE 18 IS AMENDED
8 BY ADDING A SECTION TO READ:

9 § 5750. DEPARTMENT OF CORRECTIONS RETENTION POLICY.

10 THE SECRETARY OF CORRECTIONS SHALL DEVELOP A RECORD RETENTION
11 POLICY FOR ALL COMMUNICATIONS LAWFULLY INTERCEPTED BY
12 DEPARTMENT OF CORRECTIONS EMPLOYEES. BY JANUARY 1, 2024, THE
13 SECRETARY OF CORRECTIONS SHALL ISSUE A NOTICE OF THE RECORD
14 RETENTION POLICY DEVELOPED UNDER THIS SECTION. THE NOTICE SHALL
15 BE PUBLISHED ON THE DEPARTMENT OF CORRECTION'S PUBLICLY
16 ACCESSIBLE INTERNET WEBSITE AND TRANSMITTED TO THE LEGISLATIVE
17 REFERENCE BUREAU FOR PUBLICATION IN THE NEXT AVAILABLE ISSUE OF
18 THE PENNSYLVANIA BULLETIN.

19 Section ~~2~~ 4. Section 5781 of Title 18 is amended to read: <--

20 § 5781. Expiration of chapter.

21 This chapter expires December 31, [2023] 2029, unless
22 extended by statute.

23 SECTION 5. NOTHING IN THIS ACT SHALL BE CONSTRUED TO WAIVE <--
24 OR OTHERWISE REDUCE THE RIGHTS GUARANTEED UNDER THE CONSTITUTION
25 OF THE UNITED STATES OR THE CONSTITUTION OF PENNSYLVANIA OF A
26 NONCONSENTING THIRD PARTY WHO IS PRESENT IN THE APPROVED HOME OF
27 AN INDIVIDUAL WHO IS UNDER SUPERVISION OF AN AGENT AND WHOSE
28 COMMUNICATIONS ARE LAWFULLY INTERCEPTED BY AN AGENCY OF THE
29 DEPARTMENT OF CORRECTIONS UNDER PARAGRAPH (3) OF THE DEFINITION
30 OF "ORAL COMMUNICATION" IN 18 PA.C.S. § 5702.

1 Section 3 6. This act shall take effect as follows: <--

2 (1) The amendment of the definition of "oral
3 communication" in 18 Pa.C.S. § 5702 shall take effect in 60
4 days.

5 (2) The remainder of this act shall take effect
6 immediately.